IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

OP.No. 27604 of 2002(S)

OA.1396/1999 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
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PETITIONERS:
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1. **A.KOLAPPAN, AGED 50 YEARS S/O. ARUMUGAM PILLAI, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER,(PERMANENT WAY NAGARCOIL JUNCTION.**

2. **E.SADASIVAN, AGED 45 YEARS, S/O. EASWARA PILLAI, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER, (PERMANENT WAY), NAGARCOIL JUNCTION.**

3. **R.GUNASEELAN, AGED 50 YEARS, S/O. RAMASAMY, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER, (PERMANENT WAY), NAGARCOIL JUNCTION**

4. **G.SELLADURAI, AGED 45 YEARS S/O. GANESAN SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE ENGINER, (PERMANENT WAY), NAGARCOIL JUNCTION**

5. **A.THULASIDAS, AGED 44 YEARS S/O. AYYAPPAN PILLAI, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER, (PERMANENT WAY) NAGARCOIL JUNCTION.**

6. **N.SUBRAMANIAN, AGED 46 YEARS S/O. NARAYANN NADAR, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER, (PERMANENT WAYT), NAGARCOIL JUNCTION.**

(.....2)

7. P.NESAMANI, AGED 46 YEARS, S/O. PONNAIAN SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER, (PERMANENT WAY), NAGARCOIL JUNCTION

8. S. THIRUVAHIMARBAN, AGED 53 YEARS S/O. SUNDARAKONAR, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER, (PERMANENT WAY), NAGARCOIL JUNCTION

9. D.SAMSUNDAR SINGH, AGED 51 YEARS S/O.DANIEL, SENIOR GANGMAN, SOUTHERN RAILWAY,. UNDER THE SECTION ENGINEER, (PERMANENT WAY) NAGARCOIL JUNCTION

10. R.GLASTIN BENJAMIN, AGED 48 YEARS, S/O. RASALAYAM, SENIOR GANGMAN, SOUTHERN RAILWAY, UNDER THE SECTUION ENGINEER, (PERMANENT WAY), NAGARCOIL JUNCTION.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
SRI.MARTIN G.THOTTAN
SRI.MANNATIL KUMAR
SMT.D.HEERA

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI.

2. THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., MADRAS-3

3. THE CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3

4. THE SENIOR DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM

5. THE ASSISTANT ENGINEER, SOUTHERN RAILWAY, NAGARCOIL JUNCTION, NAGARCOIL.

(.....3)

**(*) 6. S.MARIYA PAUL, SENIOR GANGMAN,
SOUTHERN RAILWAY, UNDER THE SECTION ENGINEER,
(PERMANENT WAY), NAGARCOIL JUNCTION**

**(*) 7. M.THOMAS, SENIOR GANGMAN, SOUTHERN
RAILWAY, UNDER THE SECTION ENGINEER,
(PERMANENT WAY), NAGARCOIL JUNCTION.**

(R6 & R7 are deleted from party array as per Order dtd.16-8-2007 in IA.No.11050/2007).

**BY ADV. SRI.K.V.SADANANDA PRABHU,SR.SC.RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS**

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON 26-11-2007 DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:-

Ext.P1: **Copy of the order of the Honourable Central Administrative Tribunal, Ernakulam Bench in OA.No.1396/99 dtd.19-4-2002.**

Ext.P2: **Copy of O.A.No.1396/99 along with its annexures filed by the petitioner before the CAT, Ernakulam.**

Ext.P3: **Copy of the reply statement filed by the respondents in OA.No.1396/99.**

Ext.P4: **Copy of the Railway Board order RBE.No.167/86 dtd.11.-09-1986.**

Ext.P5: **Copy of the memo filed by the respondents in OA.No.217/1999, before the Hon'ble CAT, Ernakulam.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.S. TO JUDGE.

kvs/-

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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O.P.NO.27604 of 2002-S

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Dated this the 26th day of November, 2007.

JUDGMENT

T.R. Ramachandran Nair, J.

The petitioners are the respective applicants before the Central Administrative Tribunal, Ernakulam Bench in O.A. No.1396/1999. They are presently working as Senior Gangman under the Section Engineer (Permanent Way), Nagercoil Junction of Southern Railway, Trivandrum Division. They approached the Tribunal as per Ext.P1 O.A., seeking to quash Annexure A6 series. The Tribunal having upheld the orders, they have filed the present original petition.

2. The short facts are the following: The petitioners were initially appointed as Casual Labourers who have been given the status as temporary Khalasis in the scale of pay of Rs.750 – 940 pursuant to the scheme implemented by the Railways in accordance with the directions in the judgment in **Inder Pal Yadav v. Union of India** ((1985) 2 SCC 648). They were appointed against vacancies of Gangman in the scale of Rs.775 – 1025 with effect from 10.7.1988. At the time of absorption they were working in the Karur-Dindigal Section of the then Palakkad Division. At that time they

were drawing a basic pay of Rs.822/- in the scale of Rs.750 – 940 and the pay was refixed at the stage of Rs.859/- applying FR 22(C) as it stood then. Accordingly, they were drawing the said pay with effect from 10.7.1988.

3. Later, they were transferred in the year 1990 on different dates to the control of Section Engineer (Permanent Way), Nagercoil in Trivandrum Division. It was at that time, they were issued with an order which is produced as Annexure A1 to Ext.P2 O.A., reducing the pay with retrospective effect from 10.7.1988. The pay was fixed at the stage of Rs.811/- + RS.11/- Personal Pay in the scale of Rs.775-1025 and the Personal Pay of Rs.11/- to be absorbed in the future increment. The above orders were challenged by them before the Tribunal, Ernakulam in O.A. No.1019/1996. After setting aside the orders, the Tribunal directed the authorities to proceed afresh with notice to the applicants. Pursuant to the notices thus served on them, they sent a reply which is marked as Annexure A4 to Ext.P2 O.A. Rejecting the contentions of the petitioners, Annexure A6 series orders have been passed by the Asst. Engineer, viz. the fifth respondent herein.

4. For re-fixation, the competent authority relied upon a letter No. P (s)443/1/Misc/TVC/Vol. IV dated 15.5.1995 in A6 series. It was specifically pointed out in the said orders that the posting of the petitioners

in the scale of Rs.775 – 1025 is not a promotion and hence the fixation made earlier invoking the rules for fixation of pay on promotion is not in order.

5. In the reply statement, the respondents supported the action taken and the specific contention taken is that FR 22(C) has been wrongly applied when the petitioners were deployed to track maintenance work. It is contended that the said rule can apply only in the case of promotion of railway servants and not to the casual labourers who are not Railway employees.

6. The Tribunal rejected the prayers of the petitioners by taking the view that the benefit of FR 22(C) (para 1316 of IREC) would not be applicable to them, as they were taken in the grade of Rs.775 – 1025 on empanelment and not on promotion.

7. We heard learned counsel for the parties. Learned counsel for the petitioners pointed out that the basic approach made by the respondents in refixing the pay is not correct. Learned counsel invited our attention to the relevant provisions of FR 22(C) and contended that the said provision as it stood at the relevant time protects, the fixation of pay. It was pointed out by the learned counsel that even though in Annexure A6 the refixation was made by relying upon a letter No. P(S) 443/1/Misc/TVC/Vol. IV of

15.5.1995, a reading of the same would show that the same has no application to this case. At any rate, it was contended that the same is only a demi official letter by one Assistant Officer to another Asst. Officer and it does not lay down any rule or order. It is contended further that the whole approach made is not correct. They were treated as temporary by a fiction in the light of Inder Pal Yadav's case (supra) and the attendant benefits of temporary employees including scales of pay, increments, leave, benefit of the Discipline and Appeal Rules, etc. were being extended to them also. It is submitted that FR 22(C) as it stood then, was squarely applicable, as there was no other rule which governed the matter. Learned counsel for the Railways supported the order passed by the Tribunal.

8. FR 22(C) as it stood then, viz, Rule 1316 of IREC is extracted below:

> "Rly.Board's letter No.F(E)II/79/FR-1/3 dated 12-3-80.)
>
> 1316. (F.R. 22C):- (1) Notwithstanding anything contained in these rules where a railway servant holding a post in substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or, officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:

Going by the rule, when a Railway servant is holding a post in substantive,

temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. It cannot be disputed that the petitioners were enjoying temporary status at the time of their absorption as Gangman. This was under the scheme framed by the Honourable Supreme Court pursuant to the decision in Inder Pal Yadav's case. When such temporary Railway employees are absorbed, their pay was fixed clearly under Rule 1316 quoted above. On a true interpretation of the said rule, it is evident that, for its applicability, the appointment need not be by promotion alone. The petitioners were appointed as Gangman while they were working as temporary Khalasis. When they were working as temporary Khalasis, their scale of pay was Rs.750 – 940 and since the new post carried responsibilities and duties higher than the duties and responsibilities of the post which they were carrying, the rule squarely applies. So, the very basis on which the respondents proceeded, that as the appointment was not by way of promotion, they are not entitled for the benefit of Rule 1316 (FR

22(C)) appears to be incorrect. Even though learned counsel for the respondents strenuously contended that FR 22(C) as it stood then, has no application to the facts of the case, we find that for the reasons already stated by us, the said argument cannot be accepted.

9. We would refer to Ext.P4 by which the respondents implemented the directions of the Apex Court in Inder Pal Yadav's case. Going by the same, persons like the petitioners were treated as temporary Railway servants at least by a fiction, as rightly contended by learned counsel for the petitioners. Of course, their prior status was as casual labourers. As far as casual labourers are concerned, in para 2511 of the Indian Railway Establishment Manual, the rights and privileges admissible to casual labour who are treated as temporary after completion of six months' continuous service, are laid down. The same is extracted below:

> **"2511. Rights and Privileges admissible to Casual Labour who are treated as temporary after completion of six months' continuous service:--**
>
> (a) Casual Labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post

on absorption in regular service."

In view of the above provision, the persons who were originally casual labourers, but have been treated as temporary, will also be entitled to be treated as temporary Railway servants and if that be so, the provisions of Rule 1316 (F.R. 22(C)) as noted above, will apply to them also. Thus, going by the admitted position that they were treated as temporary Railway servants as Khalasis on a scale of Rs.750-940, the refixation of their pay, obviously under Rule 1316 was perfectly in order. The view taken that the said rule will apply only on promotion alone, is not correct.

10. Therefore, we quash Annexure A6 series of Ext.P2 O.A. And Ext.P1 order passed by the Tribunal. Consequently, the petitioners shall be granted all the benefits and their original pay has to be restored. They will be entitled to draw increments and pay applicable to them from time to time based on such refixation.

The Original Petition is allowed as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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K. Balakrishnan Nair
&
T.R. Ramachandran Nair, JJ.

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O.P.NO.27604 of 2002-S
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JUDGMENT

November, 2007.